



# Health Spa Contracts

CHAPTER 407.325-407.340, MISSOURI REVISED STATUTES, 2003

## Definitions.

407.325. As used in sections 407.325 to 407.340, the following terms shall mean:

- (1) **"Business day"**, any day except a Sunday or a legal holiday;
- (2) **"Buyer"**, a natural person who enters into a health spa contract;
- (3) **"Contract price"**, the sum of all monthly fees except interest required by the health spa contract and any nonrecurring fee charged at or near the beginning of a health spa membership;
- (4) **"Health spa"**, any person, firm, corporation, organization, club or association engaged in the sale of memberships in a program of physical exercise, which includes the use of one or more of a sauna, whirlpool, weight-lifting room, massage, steam room, or exercising machine or device, or engaged in the sale of the right or privilege to use exercise equipment or facilities, such as a sauna, whirlpool, weight-lifting room, massage, steam room or exercising machine or device. The term "health spa" shall not include the following:
  - (a) Bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health spas are only incidental to their overall functions and purposes;
  - (b) Any private club owned and operated by its members;
  - (c) Any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate;
  - (d) Any facility owned or operated by the United States;
  - (e) Any facility owned or operated by the state of Missouri or any of its political subdivisions;
  - (f) Any nonprofit public or private school, college or university; and
  - (g) Any facility owned or operated by any person, firm, corporation, organization, club or association, engaged in the sale of the right or privilege to use such facility when the proceeds of the sale of such rights or privileges accounts for twenty percent or less of the gross annual receipts of the person, firm, corporation, organization, club or association;
- (5) **"Health spa contract"**, a written agreement whereby the buyer of health spa services purchases, or becomes obligated to purchase, health spa services to be rendered over a period longer than three months; and the seller of health spa services receives payment to cover a period more than three months;

(6) **"Health spa services"**, services, privileges, or rights offered for sale or provided by a health spa;

(7) **"Monthly fee"**, the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any nonrecurring fee charged at or near the beginning of a health spa membership, to be paid by a buyer, divided by the total number of months of health spa service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods which are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed;

(8) **"Prepayment"**, payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health spa are fully open and available for regular use by the members.

*(L. 1988 S.B. 486 § 1)*

**407.327. Health spas, registration with attorney general, form, fee — fees deposited in health spa regulatory fund, created — attorney general, enforcement, no bar to civil claims.**

1. It shall be unlawful for any health spa to offer, advertise, or execute or cause to be executed by the buyer any health spa contract in this state unless the health spa at the time of the offer, advertisement, sale or execution of a health spa contract has been properly registered with the office of the attorney general. The registration shall:

(1) Disclose the address, ownership, date of first sales and date of first opening of the health spa;

(2) Be renewed annually; and

(3) Be accompanied by a fee of one hundred dollars per registration and each annual renewal thereof. Each separate location where health spa services are offered shall be considered a separate health spa and shall file a separate registration, even though the separate locations are owned or operated by the same owner.

2. All fees collected pursuant to this section shall be deposited in the state treasury to the credit of a special trust fund to be known as the "Health Spa Regulatory Fund". Moneys in the health spa regulatory fund shall be used solely for the administration of sections 407.325 to 407.340.

3. The attorney general shall have all powers, rights and duties as are provided in sections 407.010 to 407.145, to seek penalties, remedies, and procedures that are provided in such sections against any health spa that is engaged in practices that are unlawful according to the provisions of this chapter.

4. The provisions of this section\* are not exclusive and do not relieve health spas or the contract subject thereto from compliance with all other applicable provisions of law nor shall such provisions bar any civil claim against any health spa which has acquired any moneys or property, real or personal, by means of any practice declared unlawful by this chapter.

(L. 1988 S.B. 486 § 2)

\*Word "subsection" appears in original rolls but apparently refers to entire section.

#### **407.329. Prepayment of contracts, treatment of funds, notice to attorney general, exceptions.**

1. Each health spa selling contracts or health spa services on a prepayment basis shall notify the office of the attorney general of the proposed location of the spa for which prepayments will be solicited and shall deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in this state until the health spa has commenced operations. The account shall be established and maintained only in a financial institution which agrees in writing with the office of the attorney general to hold all funds deposited and not to release such funds until receipt of written authorization from the office of the attorney general. The prepayment funds deposited will be eligible for withdrawal by the health spa after the health spa has opened and is providing services pursuant to its health spa contracts and the office of the attorney general gives written authorization for withdrawal.

2. The provisions of this section shall not apply to any health spa duly registered pursuant to the provisions of section 407.327 which has posted a bond or letter of credit in the amount of twenty-five thousand dollars.

(L. 1988 S.B. 486 § 3)

#### **407.330. Contracts, in writing, required provisions — buyer's right to cancel.**

1. Every health spa contract for the sale of future health spa services which are paid for in advance or which the buyer agrees to pay for in future installments shall be in writing and shall contain the following contractual provisions:

(1) A provision for the penalty-free cancellation of the contract within three business days of its making and refund upon such notice of all moneys paid under the contract;

(2) A provision requiring that to cancel a contract the buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address specified in the health spa contract; that all moneys to be refunded upon cancellation of the health spa contract shall be paid within thirty days of receipt of the notice of cancellation; and that if the customer has executed any credit or lien agreement with the health spa to pay for all or part of health spa services, any such negotiable instrument executed by the buyer shall also be returned within thirty days after such cancellation;

(3) A provision for the cancellation of the contract if the buyer dies or becomes permanently disabled and unable to use a substantial portion of the services for sixty or more consecutive days. Upon receipt of such notice, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor agreeable to the buyer and the health spa;

(4) A provision for extension of the term of the membership for time loss due to temporary disability. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor agreeable to the buyer and the health spa.

2. The provisions required by subsection 1 of this section shall be set forth under a conspicuous caption:

"BUYER'S RIGHT TO CANCEL"; and read substantially as follows:

If you wish to cancel this contract, you may cancel by delivering written notice to this health spa by certified mail, return receipt requested. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to: .....  
(Health spa shall insert its name and mailing address.)

(L. 1988 S.B. 486 § 4)

\*No continuity with § 407.330 as repealed by L. 1963 S.B. 2 § 10-102, effective 7-1-65.

**407.332. Transfer or relocation of health spa, buyer's duties, rights, when — refund of moneys, amount, when — attorney general to represent buyers, when.**

1. The provisions of section 408.405, RSMo, shall apply to any health spa contract with the following exceptions:

(1) It shall not be a defense relieving the buyer from amounts then owing on any contract between a buyer and a health spa for health services regardless of whether such contract has been assigned that the health spa has relocated provided that the health spa has relocated within ten miles of the location designated in the health spa contract;

(2) It shall not be a defense relieving the buyer from amounts then owing on any contract between a buyer and a health spa for health spa services regardless of whether such contract has been assigned that the health spa has been sold provided there has not been a lapse in services for more than thirty days. However, it shall be the legal obligation of every buyer of a health spa that has been providing health spa services pursuant to contracts to honor the terms of such contracts. The new owner of a health spa shall not consider the lapsed time period when determining how much time remains for service on any particular contract.

2. It shall be a defense relieving the buyer from amounts then owing on any contract between a buyer and a health spa for health spa services, regardless of whether such contract has been assigned, that the health spa has gone out of business without providing alternative health spa services at another location within ten miles of the location designated in the health spa contract.

3. Any health spa which relocates to a location that is ten miles from the location designated in a health spa contract or which goes out of business prior to the expiration of a buyer's contract without providing alternative health spa services at another location within ten miles of the location designated in the health spa contract shall be required to refund to the buyer funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. This provision shall not apply to any health spa that has been sold provided there has not been a lapse in service for more than thirty days. However the new owner of a health spa shall honor the terms of all contracts entered into between buyers and the health spa while controlled by the prior owner. The new owner of the health spa shall not consider the lapsed period when determining how much time remains for service on any particular contract.

4. In order to ensure adequate enforcement of the provisions of this section the office of the attorney general is empowered to represent buyers who may be injured as a result of noncompliance with the provisions of this section. The attorney general is hereby given in addition to the powers granted to the attorney general to enforce the provisions of this chapter the additional power to seek and be granted receivership of all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description of any person, firm, corporation, organization, club or association that has operated a health spa that is determined to have injured a buyer as a result of going out of business or being sold and failing to refund moneys due and owing buyers under the provisions of subsection 3 of this section, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court for the benefit of the injured buyers.

*(L. 1988 S.B. 486 § 5)*

**407.334. Contracts, signed by buyer — duration limit — voidable, when — waiver void, when.**

1. Every health spa contract shall be signed by the buyer, shall designate the date on which the buyer actually signed the contract and a copy of the contract shall be delivered to the buyer at the time the contract is executed.

2. No health spa contract shall have a duration for a period longer than thirty-six months, but the contract may give the buyer a right of renewal.

3. Any health spa contract which does not comply with the applicable provisions of section 407.330 shall be voidable at the option of the buyer.

4. Any waiver by the buyer of any of the provisions of section 407.330 shall be deemed contrary to public policy and shall be void and unenforceable.

*(L. 1988 S.B. 486 § 6)*

**407.335. Holder of contract or note subject to claims and defenses, notice.**

All health spa contracts and any promissory note executed by the buyer in connection therewith shall contain the following provision on the face thereof in at least 10-point, boldface type:

NOTICE

ANY HOLDER OF THIS CONTRACT OR NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

*(L. 1988 S.B. 486 § 7)*

**407.337. Assignment of contract, buyer's rights.**

Whether or not the health spa has complied with the notice requirements of section 407.335, any right of action or defense arising out of a health spa contract which the buyer has against the health spa, and which would be cut off by assignment, shall not be cut off by assignment of the contract to any third party holder, whether or not the holder acquires the contract in good faith and for value.

*(L. 1988 S.B. 486 § 8)*

**407.339. Bond, filed with attorney general, amount, exceptions — separate locations, bond required for each — claims against, cancellation of, when.**

1. Before entering into any nonprepayment health spa contract, every health spa except any health spa which has been engaged in such business in any county of the first or second class or in any city not located within a county for at least three years prior to August 13, 1988, and except in any county of the third or fourth class for at least one year prior to August 13, 1988, shall file and maintain with the office of the attorney general, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in this state or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

<b>Number of unexpired contracts exceeding three months</b>	<b>Amount of bond or letter of credit</b>
500 or less	\$10,000
501 to 1000	\$20,000
more than 1000	\$25,000

The number of unexpired contracts exceeding three months shall be separately calculated for each location where health spa services are offered. Any health spa subject to the requirements of this section shall be exempt from its provisions after such health spa has been engaged in business for three years.

2. Each separate location where health spas services are offered shall be considered a separate health spa and shall file a separate bond or letter of credit with respect thereto, even though the separate locations are owned or operated by the same owner; but, no owner shall be required to file with the office of the attorney general bonds or letters of credit in excess of seventy-five thousand dollars. If the seventy-five thousand dollar limit is applicable, then the bonds or letters of credit filed by such owner shall apply to all health spas owned or operated by the same owner.

3. A health spa which has not filed a bond or letter of credit may nevertheless sell health spa contracts of up to thirty-six months' duration so long as the amount of payment actually charged, due or received each month by the health spa or any holder of its health spa contracts does not exceed the monthly fee calculated pursuant to the definition thereof in section 407.325.

4. The bond required by subsection 1 of this section shall be renewed annually. No bond required of any health spa under the provisions of sections 407.325 to 407.340 shall be canceled by either party without thirty days written notice prior to the intended cancellation date. All claims against the holder of the bond must be made within ninety days after the expiration or cancellation of the bond.

*(L. 1988 S.B. 486 § 9)*

**407.340. 1. Bond, issued in favor of state of Missouri, payable to whom — aggregate liability — no cancellation without attorney general's consent.**

The bond or letter of credit required by section 407.339 shall be in favor of the state of Missouri for the benefit of:

(1) Any buyer injured by having paid money for health spa services in a facility which fails to open within sixty days after the date upon which the buyer and the health spa entered into a contract or goes out of business prior to the expiration of the buyer's health spa contract; or

(2) Any buyer injured as a result of a violation of sections 407.325 to 407.340.

2. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be canceled or terminated except with the consent of the office of the attorney general.

*(L. 1988 S.B. 486 § 10)*

\*No continuity with § 407.340 as repealed by L. 1963 S.B. 2 § 10-102, effective 7-1-65.